

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 190 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

SULOCHNABEN J. KINARIWALA

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Appearance:

MR MANISH R BHATT for Petitioner

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE M.C.PATEL

Date of decision: 29/07/98

ORAL JUDGEMENT (per C.K.Thakker J.)

This application is filed for referring the following questions for opinion of this court;

"1. Whether the Appellate Tribunal is right

in law and on facts in confirming the order made by the Commissioner of Income Tax (Appeal) directing the Assessing Officer to include only balance share i.e. after reducing the share which was alleged to be transferred to the family trust ?

2. Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income -Tax (Appeal) directing to exclude the income of the minor son under Section 64(1)(iii) of the Act ?"

3. Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income Tax (Appeal) deleting the inclusion of the income accrued or arisen to the BOIs from the total income of the assessee ?"

4. Whether the Appellate Tribunal ought not to have appreciated that the entire transaction was created with a sole view of evading due taxes ?

In our opinion questions raised in this application are covered by a decision of this court in Sunil J.Kinariwala v. Commissioner of Income Tax 211 ITR 127. The questions were answered in favour of the assessee and against the revenue in the said case. Again in similar circumstances, in Income Tax Application No.82 of 1997 to 117 of 1997, the Division Bench followed the decision in Sunil J.Kinariwala (supra) and disposed of the applications on 12.1.1998.

In our opinion, therefore, this application deserves to be rejected and is accordingly rejected.

Dt. 29.7.1998. (C.K.THAKKER J.)

(M.C.PATEL J.)